

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-232-SB-2009 (O&M)
Date of Decision: 18.08.2015

Bhajan Singh & Others

...Appellant(s)

Versus

State of Punjab

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the digest?

Present: Mr. S.P.S. Sidhu, Advocate
for the appellants.

Mr. K.S. Aulakh, Addl. A.G, Punjab
counsel for the respondent-State.

ANITA CHAUDHRY, J.

1. The appellants were convicted in FIR No.21 dated 06.02.2006, registered under Sections 363, 365, 376 and 120-B IPC at Police Station Zira, District Ferozepur.

2. The trial Court has given the name of the victim in the judgment repeatedly, though the Hon'ble Apex Court in State of Punjab Vs. Gurmit 1996(1) Recent C.R. 533 had directed all the Courts not to disclose the name of the victim.

The complainant is the mother. She had alleged that on 06.02.2006 her daughter, a student of 5th class, aged 13 years, had been taken away from the house. On an earlier occasion, Bhajan Singh and Banta Singh along with their mother and one more lady had taken their daughter to their

house in village Bamb Bandala. She had not reported the incident to the police out of fear. She had brought her daughter back. The next day, her daughter had disclosed that Bhajan and Banta Singh had raped her. Narrating the later incident, she disclosed that the entire family was at home on 30.01.2006. Her daughter went to fetch water after dinner from the hand pump in the courtyard and did not return. The mother came out and made inquiries and came to know that two young boys had taken her daughter away. The complainant had firm belief that Bhajan Singh had taken her daughter to get her married to his brother Banta Singh. On this complaint, the FIR was registered under Section 363, 366 IPC against Bhajan Singh, Banta Singh, Bhajan Singh's wife and mother and Banta Singh's mother. The victim was recovered on 21.02.2006. Her statement was recorded and she disclosed that on 30.01.2006, she came out to get water from the courtyard when a clean shaven boy came from her cattle shed and covered her mouth with her 'shawl' and forcibly dragged her to 50 – 60 yards where a white car was parked and Bagga @ Dev son of Balvir Singh, resident of Mansur Deva and one clean shaven boy were waiting. All of them pushed her in the car and took her to Bagga's house. The victim alleged that she had been crying through out but her cries could not be heard as her mouth was gagged. She was kept in a room and the room was bolted and threats were given that in case she raised noise, her brothers and

sisters would be killed. She had alleged that the boys had left her and returned after some time and Bagga raped her. After eight days, she was taken to a Dera by Bagga and his mother Jagir Kaur and paternal uncle Bohra and the maternal aunt in a van hired by Bagga. She remained in the room with Bagga and his mother and after about one month, Bagga's mother and she returned in a bus and had got down near Avtar Palace and came to village Mansoor Deva where she was again confined and during this period, Bagga's brother namely Sukhchain, his sister and Jagir Kaur kept watch on her. The prosecutrix further disclosed that on 20.03.2006 her mother came to Mansoor Deva along with some people and rescued her.

3. On these allegations, the police arrested Bhajan Singh, Banta Singh, Parsin Kaur, Ranjit Kaur, Bohar Singh, Jagir Kaur, Manjit Kaur and Bagga Singh. Separate challan was filed against Bagga who was found to be a juvenile and was separately tried by the Juvenile Justice Board, Ferozepur.

4. The trial against juvenile Bagga ended in acquittal on 10.10.2008.

5. Charge was framed under Sections 363, 365, 120-B IPC and Section 376 IPC. The accused pleaded not guilty.

6. The prosecution examined the victim as their first witness and thereafter, her mother, the official witnesses and the Medical Officers.

7. The trial Court accepted the statement of the victim so far as the allegations made against Bhajan and Banta. The remaining accused were acquitted. The accused-appellants were sentenced to undergo following imprisonment:-

Name of Convicts	Offence Under Sections	Rigorous Imprisonment for a period of	Fine	In default of payment of fine RI
Bhajan Singh	363 IPC	3 years	Rs.1000/-	3 months
	365 IPC	3 years	Rs.1000/-	3 months
	376 IPC	10 years	Rs.5000/-	1 year
Banta Singh	363 IPC	3 years	Rs.1000/-	3 months
	365 IPC	3 years	Rs.1000/-	3 months
	376 IPC	10 years	Rs.5000/-	1 year

8. Aggrieved, the accused-appellants have preferred the present appeal.

9. The submission made on behalf of the appellants was that the story is improbable and the trial Court had gone wrong in accepting the story. It was urged that earlier an incident was alleged and the girl was taken away and she swears on oath that the girl had been raped but no complaint was lodged. It was urged that the girl was missing since 30.01.2006 but the matter was reported a week later and there is no explanation for the delay. It was urged that Bagga who was tried by the Juvenile Justice Board was acquitted. It was urged that the girl had willingly gone and her recovery was effected after a fortnight and she did not

make any attempt to escape and it is a story purely concocted. It was urged that there was no medical evidence to support the statement and the girl had named even the female members and the mother of the boys and it is unbelievable that they would be privy to such a strange incident.

10. The submission of the State Counsel in turn was that a finding with respect to age has come on record and the statement of the prosecutrix is at par with that of an injured witness and is reliable and carries greatest weight and was rightly accepted by the Court below and since the reputation of the family is involved, a lot of re-thinking takes place within the family before such matters are reported to the police.

11. According to the prosecution, the incident took place on 6th of February, 2006. Forty five days prior to this, the victim was taken by the accused and his family but the mother brought her daughter back and the matter was not reported to the police. The complainant has stated that it was out of fear that she did not report the incident but when the girl was taken again, the report was lodged. No-one had seen the boys taking the girl away but when the girl went missing, the mother lodged a missing report after a week naming Bhajan Singh, Banta Singh, Bhajan Singh's wife & mother and Banta Singh's mother. The girl was recovered after a fortnight and Section 376 IPC was added subsequently.

12. According to the prosecution, the victim was 13 – 14 years old. The law is settled that the Court can act upon the solitary statement of the prosecutrix provided the testimony is truthful and trustworthy but at the same time, it cannot be mechanically applied to every case of sexual assault and the veracity of the story projected by the prosecution qua allegations of rape must be examined.

13. The trial Court had placed implicit reliance upon the testimony of the prosecutrix and her mother to conclude that the accused had committed rape upon the prosecutrix. It rejected the observations that there was delay in lodging the report and held that the statement given by the prosecutrix was convincing. The age of the girl has been challenged. Before proceeding further, the salient propositions of the law laid down by the Apex Court need to be noted.

In ***State of Punjab Vs. Gurmit Singh and others, AIR, 1996 S.C. 1393*** the Hon'ble apex Court had laid down the following propositions of law which may be summed up as follows:-

- 1. The delay in lodging of the First Information Report, if properly explained should not matter in sexual offences.*
- 2. The testimony of the victim in cases of sexual offences is vital and unless there are compelling circumstances which necessitate looking for corroboration of her statement, the Court should find no difficulty to act on the testimony of a victim*

of sexual assault alone to convict.

3. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases, amounts to adding insult to injury.

4. The Court while appreciating the evidence of the prosecution may look for some assurance of her statement to satisfy its judicial conscience, since she, is a witness who is interested in the outcome of the charge levelled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused.

5. The evidence of a victim of sexual assault stands almost at par with the evidence of an injured witness.

6. The evidence of a victim of sexual offence is entitled to great weight, absence of corroboration notwithstanding,

7. Corroborative evidence is not an imperative component of judicial credence in every case of rape.

8. Even in cases, where there is some acceptable material on the record to show that the victim was habituated to sexual intercourse no such inference like the victim being a girl of "lose moral character" is permissible to be drawn from that circumstances alone.

9. Even if the prosecutrix, in a given case, has been promiscuous in her sexual behaviour earlier, she has a right to refuse to submit herself to sexual intercourse to anyone and everyone because she is not a vulnerable object or prey for being sexually assaulted by anyone and everyone. No stigma, should be cast against such a witness by the Courts, for after all it is the accused and not the victim of sex crime who is on trial in Court.

Earlier also the Supreme Court in the case of [State of Maharashtra v. Chandraprakash Kewalchand Jain, A.I.R. 1990 Supreme Court 658](#), summarised the legal position with regard to corroboration of the statement of the prosecutrix. Justice Ahmadi as he was then, speaking for the Court, observed :-

"15. It is necessary at the outset to state what the approach of the Court should be while evaluating the prosecution evidence, particularly the evidence of the prosecutrix, in sex-offences. It is essential that the evidence of the prosecutrix should be corroborated in material particulars before the Court bases a conviction on her testimony? Does the rule of prudence demand that in all cases save the rarest of rare the Court should look for corroboration before acting on the evidence of the prosecutrix."

16. A prosecutrix of a sex-offence cannot be put on par with an accomplice. She is in fact a victim of the crime.....

17. We think it proper, having regard to the increase in the number of sex-violation cases in the recent past, particularly cases of molestation and rape in custody, to remove the notion, if it persists, that the testimony of a woman who is a victim of sexual violence must ordinarily be corroborated in material particulars except in the rarest of rare cases. To insist on corroboration except in the rarest of rare cases is to equate a woman who is a

victim of the lust of another with an accomplice to a crime and thereby insult womanhood. It would be adding insult to injury to tell a woman that her story of woe will not be believed unless it is corroborated in material particulars as in the case of an accomplice to a crime. Ours is a conservative society where it concerns sexual behaviour. Our is not a permissive society as in some of the western and European countries. Our standard of decency and morality in public life is not the same as in those countries. It is, however, unfortunate that respect for womanhood in our country is on the decline and cases of molestation and rape are steadily growing. An Indian woman is now required to suffer indignities in different forms, from lewd remarks to eve-teasing, from molestation to rape. Decency and morality in public life can be promoted and protected only if we deal strictly with those violate the societal norms. The standard of proof to be expected by the Court in such cases, must take into account the fact that such crimes are generally committed on the sly and very rarely direct evidence of a person other than the prosecutrix is available. Courts must also realise that ordinarily a woman, more so a young girl, will not stake her reputation by levelling a false charge concerning her chastity".

In the case of [Shri Bodhisattwa Gautam v. Miss Subhra Chakraborty, A.I.R. 1996 Supreme Court 922](#), S. Saghir Ahmad, J. speaking for the Bench observed as follows:-

"10. Rape is thus not only a crime against the person of a woman (victim), it is a crime against the entire society. It destroys the entire psychology of a woman and pushes her into deep emotional crises. It is only by her sheer will power that she rehabilitates herself in the society which, on coming to know of the rape, looks down upon her in derision and contempt. Rape is, therefore, the most hated crime. It is a crime against basic human rights and is also violative of the victim's most cherished of the Fundamental Rights, namely, the Right to Life contained in Article 21. To many feminists and psychiatrists, rape is less a sexual offence than an act of aggression aimed at degrading and humiliating women. The rape laws do not, unfortunately, take care of the social aspect of the matter and are inept in many respects."

14. To appreciate the rival submissions raised at the bar and after weighing and analysing the evidence brought on record, it is necessary to first advert to the age of the victim suffice it to mention that the mother of the victim had given the age of her daughter as 13 years. The victim had stated that she was 14 years old when she was kidnapped. No birth certificate or age certificate was produced by the prosecution. The only document is an entry in a register of a private school i.e. the attendance register, photocopy of which is Ex.PW4/A. The date of birth mentioned therein is 18.08.1993. The Medical Officer had advised radiological

test, ultrasound and DNA test. According to the ossification test, the age of the girl was between 14 to 16. The trial Judge had opined that the girl was under 16.

15. The issue would get prominence if the story set forth by the prosecution is accepted to be credible. The age of the girl would be relevant. The manner in which the incident is narrated and the post conduct raises doubts about the incident. The conduct of the prosecutrix is unusual. There is an inordinate and unexplained delay which makes the matter more doubtful. The victim had stayed with the family of the accused for over a fortnight and they had been moving from one place to the other and there are no injuries, therefore, the circumstances create doubt about the correctness of the prosecution version.

Hon'ble Supreme Court in **Raju and others Vs. State of Madhya Pradesh, (2008) 15 SCC 133** has held that the accused must be protected against the possibility of false implication. It has been further held that in so far as the allegations of rape are concerned, the evidence of prosecutrix must be examined as that of an injured witness whose presence at the spot is probable but it can never be presumed that her statement should without exception be taken as the gospel truth. It was held:

"10. The aforesaid judgments lay down the basic principle that ordinarily the evidence of a prosecutrix should not be suspect and should be believed, the more

so as her statement has to be evaluated at par with that of an injured witness and if the evidence is reliable, no corroboration is necessary. Undoubtedly, the aforesaid observations must carry the greatest weight and we respectfully agree with them, but at the same time they cannot be universally and mechanically applied to the facts of every case of sexual assault which comes before the Court.

11. It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration.

12. Reference has been made in Gurmit Singh's case to the amendments in 1983 to Sections [375](#) and [376](#) of the India Penal Code making the penal provisions relating to rape more stringent, and also to Section [114A](#) of the Evidence Act with respect to a presumption to be raised with regard to allegations of consensual sex in a case of

alleged rape. It is however significant that Sections [113A](#) and [113B](#) too were inserted in the Evidence Act by the same amendment by which certain presumptions in cases of abetment of suicide and dowry death have been raised against the accused. These two Sections, thus, raise a clear presumption in favour of the prosecution but no similar presumption with respect to rape is visualized as the presumption under Section [114A](#) is extremely restricted in its applicability. This clearly shows that in so far as allegations of rape are concerned, the evidence of a prosecutrix must be examined as that of an injured witness whose presence at the spot is probable but it can never be presumed that her statement should, without exception, be taken as the gospel truth. Additionally her statement can, at best, be adjudged on the principle that ordinarily no injured witness would tell a lie or implicate a person falsely. We believe that it is under these principles that this case, and others such as this one, need to be examined.”

In **Tameezuddin alias Tammu Vs. State (NCT of Delhi), (2009) 15 SCC 566** it has been held that though evidence of prosecutrix must be given predominant consideration, but to hold that this evidence has to be accepted even if the story is improbable and belies logic, would be doing violence to the very principles which govern the appreciation of evidence in a criminal matter. It had been held as follows:

"9. It is true that in a case of rape the evidence of the prosecutrix must be given predominant consideration, but to hold that this evidence has to be accepted even if the story is improbable and belies logic, would be doing violence to the very principles which govern the appreciation of evidence in a criminal matter. We are of the opinion that story is indeed improbable.

In **Narender Kumar Vs. State (NCT of Delhi), (2012) 7 SCC 171** Hon'ble Apex Court has held that minor or insignificant inconsistencies, discrepancies or contradictions in the statement of prosecutrix are inconsequential. However, if the statement of prosecutrix suffers from serious infirmities, inconsistencies and deliberate improvements on material points, no reliance can be placed thereon. It has further been held that onus of proof is on the prosecution to establish each ingredient of offence beyond reasonable doubt on basis of cogent evidence and material on record. The sole testimony of prosecutrix can be relied for the purpose of conviction without any corroboration if the same inspires confidence, but if court finds it difficult to accept version of prosecutrix on its face value, it may look for corroboration by other evidence, direct or circumstantial. The Court must appreciate evidence in its totality with utmost sensitivity.

16. Keeping in view the principles, we have to first advert to the issue of lodging of the FIR. As is demonstrated, the victim was missing from the house since 6th February, 2006. The mother

lodged the missing report after a week though the girl had been picked up earlier and the complainant says that she had brought her daughter back from the house of the accused the next day. In such a circumstances, the mother was expected to have necessitous concern and could have gone to the police station to lodge a missing report which could have prompted the Investigating Officer to act. It baffles common sense that the mother for some unfathomable reason that defeats basic human prudence, approached the police station quite belatedly. It is apt to mention that in rape cases, delay in lodging the FIR by the parents or the prosecutrix in all circumstances is not of significance. The authorities in this regard are that delay occurs on account of trauma suffered, the agony and anguish that creates the turbulence in the mind of the victim muster courage to expose themselves. In ***Rajesh Patel Vs. State of Jharkhand*** (2013) 3 SCC 791 wherein the facts and circumstances of the delay of 11 days in lodging the FIR were treated as vital as the explanation offered was regarded as totally unattainable.

17. The Medical Officers on the basis of the radiological tests had opined that the girl was between the age of 14 and 16. If a margin of 2 years is added, the girl would be over 16 years of age. The medical report is only an expert's opinion. The accurate assessment of age cannot be made. The prosecution had failed to bring the birth certificate. Even if the report of the ossification test is taken at its face value considering the possibility of an error of plus minus two years in the opinion rendered by the radiological

examination, it could not be concluded with certainty that the prosecutrix was below 16 years of age on the day of incident. The victim was over 16 years of age. It is settled that when two opinions are possible, the one favouring the accused has to be taken. A similar issue was being deliberated by the Division Bench in ***State of NCT of Delhi Vs. Shiva & Ors.***, CrI. L.P. No.172/2008, decided on 16.03.2012 wherein it is held:-

"Ossification test was conducted to determine the age of the prosecutrix. Her age was opined between 14 to 16 years as per report Ex.PW-8/B. This report was prepared on 19.02.2003 by Dr.Rahul Garg. However, the prosecution did not produce him to prove his opinion and only examined one M.D.Joshi, Record Clerk, DDU hospital, who merely identified his handwriting and signatures. The prosecution did not summon any other competent doctor to prove the opinion given by Dr.Rahul Garg. Even if the report Ex.PW-8/B is taken at its face value, considering the possibility of an error of plus minus two years in the opinion rendered by radiological examination, it cannot be concluded with certainty that the prosecutrix was below sixteen years on the date of incident. [In Jaya Mala v.Home Secretary, Govt.of J&K](#) (1982) SCC 1296, the Supreme Court held that there can be two years' margin either way in radiological examination.

It is well settled that when two opinions are possible, the one favouring the accused has to be

taken. Since the prosecutrix was not below sixteen years, sexual relations (if any) with her consent did not establish commission of 'rape' on her person. There is no evidence whatsoever on record if at any time any accused attempted to sell the prosecutrix for any purpose."

18. After obtaining the factual matrix, if the case is examined on the touch tone of the parameters laid down in number of authorities and keeping into view that law allows immense allowance to delay in rape cases, considering the trauma suffered by the victim and other factors but the case has to be appreciated from a different perspective as well.

19. The prosecutrix was missing from home. The family does not lodge a missing report, therefore, the statement of the mother throws a great challenge to common sense. No explanation was offered for the delay. The argument presented by the State that there are constraints for which delay should be ignored but the argument is not acceptable for the reason that the prosecutrix at that time was nowhere on the scene. It was the mother who was required to approach the police regarding her grown up daughter. In the absence of any explanation, it gives rise to a sense of doubt.

20. The fact that the victim had been moving from the one place to another along with the family members of the accused, does not command acceptance and it is difficult to believe the story projected by the prosecution. The

prosecutrix had deposed that she was taken from one place to another and the only explanation given by her was that she was under threat which is difficult to believe. Under these circumstances, the medical evidence gains significance. The examining doctor had found no signs of any external injury on the body. There was no injury on the private parts. Therefore, considering that there is a delay in the FIR and no injuries on the victim, it leaves a mark of doubt to treat the testimony of the prosecutrix as natural so as to inspire confidence. The story put forward by the prosecutrix is improbable and belies logic.

21. The degree of proof in rape cases is expected to be of a higher standard. The prosecution was unable to prove its case beyond a reasonable doubt. Resultantly the appeal is accepted. The judgment of conviction and order of sentence are set aside. The appellants are on bail. They are discharged of their bail bonds.

(ANITA CHAUDHRY)
JUDGE

18.08.2015
sunil